

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JAMES R. MCCULLEY,)	
)	
Plaintiff,)	
vs.)	NO. CIV-07-0546-HE
)	
OKLAHOMA DEPARTMENT OF)	
CORRECTIONS ET AL.,)	
)	
Defendants.)	


ORDER

Plaintiff James R. Mcculley, a state prisoner appearing *pro se*, filed this action pursuant to 42 U.S.C. § 1983. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Doyle W. Argo, who has concluded the plaintiff's only constitutional claim, Count VIII, should be dismissed based on Eleventh Amendment immunity and lack of personal participation. As the case is still in an early phase, the magistrate judge recommends that the court decline to exercise supplemental jurisdiction over the remaining state law claims.

The petitioner failed to object to the Report and Recommendation and thus waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996); *see* 28 U.S.C. § 636(b)(1)(C); LCvR72.1. Accordingly, the court adopts Magistrate Judge Argo's Report and Recommendation and dismisses the claim in Count VIII with prejudice and the remaining claims (Counts I-VI) without prejudice.

IT IS SO ORDERED.

Dated this 10th day of October, 2007.



JOE HEATON
UNITED STATES DISTRICT JUDGE